

**DECISION**

12090 South  
Proc II

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Protest of Bid Rejection For Lateness]*

FILE:

B-195438

DATE: November 23, 1979

MATTER OF: Health Management Systems, Inc.

**DIGEST:**

1. Late offer sent by regular mail must be rejected as late under provisions of solicitation even though postal clerk erroneously informed offeror that certified or registered mail could not be sent to Army Post Office number in RFP and offeror obtained mailing receipt dated five days before RFP's closing date.
  2. Alleged mishandling of proposal after receipt at Army Post Office does not justify consideration of late proposal. Consideration of late proposal is permitted only for mishandling after timely receipt at "Government installation" and Army Post Office is not such an installation.
- DLB-83404*  
*Proc 315*

Health Management Systems, Inc. (Health Management) protests the rejection of its late proposal under request for proposals (RFP) DAJA37-79-R-0266, issued by the U.S. Army Procurement Agency, Europe (USAPAE). We conclude that the proposal was properly rejected as late. ✓

Handling of late proposals is governed by Defense Acquisition Regulation (DAR) § 3.506 (1976 ed.) which states that offerors are responsible for submitting proposals so as to reach the designated Government office on time. That regulation also provides that a proposal received in the office designated in the RFP after the exact time specified is late and shall be considered only as provided in DAR § 7-2002.4. A late bid or proposal received prior to award may be considered only

*110911*  
*009866*  
*Late bids  
mail delivery  
problems  
procurement  
practices*

if it was sent by registered or certified mail at least five days prior to the date specified for receipt or if late receipt at the designated office was caused solely by mishandling after receipt at the Government installation.

The protester's proposal is late because it was not received until the day after the closing date specified in the RFP for receipt of proposals. The protester states that its proposal was sent by regular mail on the fifth calendar day prior to the closing date because a postal clerk refused to certify or register the letter on the erroneous belief that such mail could not be sent to the designated Army Post Office (APO) number included in the address. The proposal, therefore, was sent by regular mail and a receipt was obtained from the postal clerk documenting the mailing date. On the next day, the offeror telephoned the Army procuring activity which was located in Germany and informed officials of the difficulties it encountered in attempting to mail its proposal by certified or registered mail. The firm was advised to send a copy of the proposal through international mail along with the receipt documenting the mailing date of the original proposal. However, the copy of the proposal and the receipt were received late by the procuring activity.

The protester argues that its proposal should be considered because of its unsuccessful efforts to mail the proposal by certified or registered mail as instructed. In this connection, the protester asserts that the solicitation provided improper and misleading instructions to the effect that certified or registered mail could be sent to APO New York 09710 and it did everything in its power to document that the proposal was mailed within the prescribed time frame.

It is apparent that the responsible postal clerk was misinformed regarding the use of registered or certified mail. Chapter 126.2 of the U.S. Postal Service Manual, Preparation for Mailing: Mail Addressed to Military Post Offices Overseas, does not list any registered or

certified mail restriction with regard to the APO number used in this case. Even though the postal clerk was in error, however, there is no exception provided in the applicable regulation for considering a late proposal sent by regular mail irrespective of circumstances. Moreover, we have held that documentation in the form of a mailing receipt does not satisfy the requirement that the bid or proposal be sent by registered or certified mail. Cf. Z B Precision Products, Inc., B-187985, May 6, 1977, 77-1 CPD 316. This is because the mailing receipt does not correspond to an official identifying number on the mailed article. Even though in this case the RFP number was written on the postal receipt, that number does not correspond to an official identifying number applied to the mailed article by the Postal Service. In other words, in a legal sense the mailing receipt is evidence only that something was mailed--it does not identify a particular item of mail.

The protester also argues that the late receipt of its proposal was due solely to mishandling after receipt at the Government installation.

The solicitation, in Block 8 of Standard Form 33, Solicitation, Offer and Award, specified that offers should be addressed to: U.S. Army Procurement Agency, Europe, ATTN: AEUPC-MP, APO New York 09710. The agency is located in Frankfurt, Germany. The protester asserts that the "Government installation" in this case is APO New York and argues that its proposal clearly was received at that "address" prior to the date specified in the RFP for receipt of proposals. The protester believes that proper procedures were not provided to ensure timely transfer of its proposal from "APO New York" to the Frankfurt destination and submits that the lateness was due to Government mishandling.

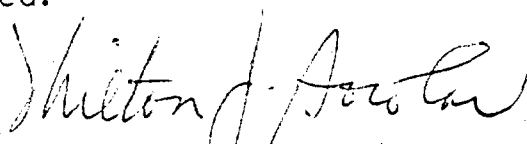
We are forced to disagree with this argument. As indicated by the telephone inquiry with Army procuring personnel the protester knew that the procuring agency was located in Frankfurt, Germany and that proposals would be received there. We believe it is commonly

known that New York APO numbers are used for routing mail through domestic channels for ultimate delivery to Government installations located abroad and that the APO number is not itself the ultimate destination. APO is an abbreviation for Army Post Office, Army Regulation (AR) 310-50, November 3, 1975, which is a branch of the United States Post Office. AR 310-25, September 15, 1975. We have consistently considered the term "Government installation" in the Late Proposal Clause as referring to the procuring agency rather than to a particular U.S. Post Office. Phelps-Stokes Fund, B-194347, May 21, 1979, 79-1 CPD 366.

The evidence does not establish that the proposal was received at the Frankfurt installation prior to the closing date. The lateness, therefore, is not due to mishandling after receipt at the Government installation, that is, the U.S. Army Procuring Agency, Europe.

As indicated above, there is no legal basis in the circumstances for considering the protester's late proposal. In reaching this conclusion we realize that the strict application of the rules governing the acceptance of late proposals can lead to harsh results where, as here, the lateness can be attributed to error by the Postal Service. Nevertheless, the Government must conduct its procurements in accordance with clearly defined standards that apply equally to all to ensure fair and impartial treatment. There must be a time after which offers may not be received in order to maintain confidence in the competitive procurement system even if the Government loses the benefit of a proposal that is more advantageous than those timely received.

The protest is denied.

  
For The Comptroller General  
of the United States